

SMALL WATERSHED REHABILITATION AMENDMENTS OF
1999

APRIL 4, 2000.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. COMBEST, from the Committee on Agriculture,
submitted the following

R E P O R T

[To accompany H.R. 728]

[Including cost estimate of the Congressional Budget Office]

The Committee on Agriculture, to whom was referred the bill (H.R. 728) to amend the Watershed Protection and Flood Prevention Act to authorize the Secretary of Agriculture to provide cost share assistance for the rehabilitation of structural measures constructed as part of water resource projects previously funded by the Secretary under such Act or related laws, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Small Watershed Rehabilitation Amendments of 1999”.

SEC. 2. REHABILITATION OF WATER RESOURCE STRUCTURAL MEASURES CONSTRUCTED UNDER CERTAIN DEPARTMENT OF AGRICULTURE PROGRAMS.

The Watershed Protection and Flood Prevention Act (16 U.S.C. 1001 et seq.) is amended by adding at the end the following new section:

“SEC. 14. REHABILITATION OF STRUCTURAL MEASURES NEAR, AT, OR PAST THEIR EVALUATED LIFE EXPECTANCY.

“(a) **DEFINITIONS.**—For purposes of this section:

“(1) **REHABILITATION.**—The term ‘rehabilitation’, with respect to a structural measure constructed as part of a covered water resource project, means the completion of all work necessary to extend the service life of the structural measure and meet applicable safety and performance standards. This may include (A) protecting the integrity of the structural measure or prolonging the useful life of the structural measure beyond the original evaluated life expect-

ancy, (B) correcting damage to the structural measure from a catastrophic event, (C) correcting the deterioration of structural components that are deteriorating at an abnormal rate, or (D) upgrading the structural measure to meet changed land use conditions in the watershed served by the structural measure or changed safety criteria applicable to the structural measure.

“(2) COVERED WATER RESOURCE PROJECT.—The term ‘covered water resource project’ means a work of improvement carried out under any of the following:

“(A) This Act.

“(B) Section 13 of the Act of December 22, 1944 (Public Law 78–534; 58 Stat. 905).

“(C) The pilot watershed program authorized under the heading ‘FLOOD PREVENTION’ of the Department of Agriculture Appropriation Act, 1954 (Public Law 156; 67 Stat. 214).

“(D) Subtitle H of title XV of the Agriculture and Food Act of 1981 (16 U.S.C. 3451 et seq.; commonly known as the Resource Conservation and Development Program).

“(3) STRUCTURAL MEASURE.—The term ‘structural measure’ means a physical improvement that impounds water, commonly known as a dam, which was constructed as part of a covered water resource project. The term includes the resulting immediate impoundment area and the immediate flood pool of the physical improvement.

“(b) COST SHARE ASSISTANCE FOR REHABILITATION.—

“(1) ASSISTANCE AUTHORIZED.—The Secretary may provide financial assistance to a local organization to cover a portion of the total costs incurred for the rehabilitation of structural measures originally constructed as part of a covered water resource project. The total costs of rehabilitation include the costs associated with all components of the rehabilitation project, including acquisition of land, easements, and rights-of-ways, rehabilitation project administration, the provision of technical assistance, contracting, and construction costs, except that the local organization shall be responsible for securing all land, easements, or rights-of-ways necessary for the project.

“(2) AMOUNT OF ASSISTANCE; LIMITATIONS.—The amount of Federal funds that may be made available under this subsection to a local organization for construction of a particular rehabilitation project shall be equal to 65 percent of the total rehabilitation costs, but not to exceed 100 percent of actual construction costs incurred in the rehabilitation. However, the local organization shall be responsible for the costs of water, mineral, and other resource rights and all Federal, State, and local permits.

“(3) RELATION TO LAND USE AND DEVELOPMENT REGULATIONS.—As a condition on entering into an agreement to provide financial assistance under this subsection, the Secretary, working in concert with the affected unit or units of general purpose local government, may require that proper zoning or other developmental regulations are in place in the watershed in which the structural measures to be rehabilitated under the agreement are located so that—

“(A) the completed rehabilitation project is not quickly rendered inadequate by additional development; and

“(B) society can realize the full benefits of the rehabilitation investment.

“(4) PROHIBITION ON CERTAIN REHABILITATION ASSISTANCE.—The Secretary shall not approve a rehabilitation request if the Secretary determines that the need for rehabilitation of the structure is the result of a lack of adequate maintenance by the party responsible for the maintenance.

“(c) TECHNICAL ASSISTANCE FOR WATERSHED PROJECT REHABILITATION.—The Secretary, acting through the Natural Resources Conservation Service, may provide technical assistance in planning, designing, and implementing rehabilitation projects should a local organization request such assistance. Such assistance may consist of specialists in such fields as engineering, geology, soils, agronomy, biology, hydraulics, hydrology, economics, water quality, and contract administration.

“(d) PROHIBITED USE.—

“(1) PERFORMANCE OF OPERATION AND MAINTENANCE.—Rehabilitation assistance provided under this section may not be used to perform operation and maintenance activities specified in the agreement for the covered water resource project entered into between the Secretary and the local organization responsible for the works of improvement. Such operation and maintenance activities shall remain the responsibility of the local organization, as provided in the project work plan.

“(2) RENEGOTIATION.—Notwithstanding paragraph (1), as part of the provision of financial assistance under subsection (b), the Secretary may renegotiate the original agreement for the covered water resource project entered into between

the Secretary and the local organization regarding responsibility for the operation and maintenance of the project when the rehabilitation is finished.

“(e) APPLICATION FOR REHABILITATION ASSISTANCE.—A local organization may apply to the Secretary for technical and financial assistance under this section if the application has also been submitted to and approved by the State agency having supervisory responsibility over the covered water resource project at issue or, if there is no State agency having such responsibility, by the Governor of the State. The Secretary shall request the State dam safety officer (or equivalent State official) to be involved in the application process if State permits or approvals are required. The rehabilitation of structural measures shall meet standards established by the Secretary and address other dam safety issues. At the request of the local organization, personnel of the Natural Resources Conservation Service of the Department of Agriculture may assist in preparing applications for assistance.

“(f) JUSTIFICATION FOR REHABILITATION ASSISTANCE.—In order to qualify for technical or financial assistance under this authority, the Secretary shall require the rehabilitation project to be performed in the most cost-effective manner that accomplishes the rehabilitation objective, however, the Secretary is not required to develop a cost-benefit ratio analysis or a cost-benefit ratio. The benefits of, and the requirements for, the rehabilitation project shall be documented to ensure the wise and responsible use of Federal funds.

“(g) RANKING OF REQUESTS FOR REHABILITATION ASSISTANCE.—The Secretary shall establish a system for the timely consideration and approval of rehabilitation requests, recognizing that such requests will be received throughout the fiscal year and subject to the availability of funds to carry out this section. The Secretary shall ensure that the system provides for proper administration by the Department of Agriculture and is equitable for all local organizations. The approval process shall be in writing and shall be made known to all local organizations and appropriate State agencies.

“(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary \$60,000,000 for each of the fiscal years 2000 through 2009 to provide financial and technical assistance under this section.

“(i) ASSESSMENT OF REHABILITATION NEEDS.—Of the amount appropriated pursuant to subsection (h) for fiscal years 2000 and 2001, \$5,000,000 shall be used by the Secretary, in concert with the responsible State agencies, to conduct an assessment of the rehabilitation needs of covered water resource projects in all States in which such projects are located.

“(j) RECORDKEEPING AND REPORTS.—

“(1) SECRETARY.—The Secretary shall maintain a data base to track the benefits derived from rehabilitation projects supported under this section and the expenditures made under this section. On the basis of such data and the reports submitted under paragraph (2), the Secretary shall prepare and submit to Congress an annual report providing the status of activities conducted under this section.

“(2) GRANT RECIPIENTS.—Not later than 90 days after the completion of a specific rehabilitation project for which assistance is provided under this section, the local organization that received the assistance shall make a report to the Secretary giving the status of any rehabilitation effort undertaken using financial assistance provided under this section.”.

SEC. 3. NONINTERFERENCE WITH STATE AND LOCAL FLOOD DEBRIS REMOVAL EFFORTS.

The Watershed Protection and Flood Prevention Act (16 U.S.C. 1001 et seq.) is amended by inserting after section 14, as added by section 2 of this Act, the following new section:

“SEC. 15. NONINTERFERENCE WITH STATE AND LOCAL FLOOD DEBRIS REMOVAL EFFORTS.

“The Secretary of Agriculture and other executive branch officials and employees may not prohibit or condition the ability of a State or local government to remove from land or waters any rocks, vegetation, soil, or other debris deposited by flood waters when the primary purpose of the removal operation is to reduce the risk and severity of subsequent flooding.”.

SEC. 4. PRIVACY OF PERSONAL DATA RECEIVED BY DEPARTMENT OF AGRICULTURE AND DATA GATHERING LOCATIONS.

The Food Security Act of 1985 is amended by inserting after section 1243 (16 U.S.C. 3843) the following new section:

“SEC. 1244. PRIVACY OF PERSONAL DATA RELATING TO NATURAL RESOURCES CONSERVATION PROGRAMS.

“(a) INFORMATION AND DATA RECEIVED FOR TECHNICAL AND FINANCIAL ASSISTANCE.—Notwithstanding any other provision of law and except as provided in para-

graph (c), information and data provided to, or developed by, the Secretary of Agriculture (including a contractor of the Secretary) for the purpose of providing technical or financial assistance to a landowner or operator with respect to any natural resources conservation program administered by the Natural Resources Conservation Service or the Farm Service Agency shall not be released or disclosed to any agency or person outside the Department of Agriculture.

“(b) INVENTORY, MONITORING, AND SITE SPECIFIC DATA.—Notwithstanding any other provision of law and except as provided in paragraph (c), in order to maintain the personal privacy, confidentiality, and cooperation of landowners and operators, and to maintain the integrity of sample sites, the specific geographic locations of the National Resources Inventory of the Department of Agriculture data gathering sites and the information and data generated by such sites are not public information and shall not be subject to mandatory disclosure or released to any local, tribal, State, or Federal agency outside the Department of Agriculture.

“(c) EXCEPTIONS.—

“(1) RELEASE AND DISCLOSURE FOR ENFORCEMENT.—The Secretary of Agriculture may release or disclose information or data covered by subsection (a) or (b) to the extent necessary to enforce the natural resources conservation programs referred to in subsection (a).

“(2) LIMITED DISCLOSURE TO COOPERATING PERSONS AND AGENCIES.—The Secretary may release or disclose information or data covered by subsection (a) or (b) to a person or a local, tribal, State, or Federal agency working in cooperation with the Secretary of Agriculture in providing technical and financial assistance described in subsection (a) or collecting information and data from National Resources Inventory data gathering sites. However, the person or local, tribal, State, or Federal agency that receives the information or data may release the information or data only for the purpose of assisting the Secretary in providing the requested technical or financial assistance or in collecting information and data from National Resources Inventory data gathering sites.

“(3) LIMITED EXCEPTION FOR STATISTICAL AND AGGREGATE DATA.—The Secretary may release information or data covered by subsection (b), if the information or data has been transformed into a statistical or aggregate form that does not allow identification of the individual landowner, operator, or specific data gathering site.

“(d) VIOLATIONS.—Section 1770(c) of the Food Security Act of 1985 (7 U.S.C. 2276) shall apply to any person who releases or causes to be released information or data in violation of this section.”.

BRIEF EXPLANATION

H.R. 728, the Small Watershed Rehabilitation Amendments of 1999, adds a new section to the Watershed Protection and Flood Prevention Act of 1954 (PL-566), the small watershed program administered by the Natural Resources Conservation Service (NRCS).

The bill authorizes a new, 10-year program to rehabilitate aging floodwater retention projects; \$60 million is authorized to be appropriated in each of the fiscal years 2000 through 2009. In addition, the Secretary of Agriculture in concert with responsible state agencies is required to use \$5 million of the total appropriation during fiscal years 2000 and 2001 to assess the rehabilitation needs in states where these dams and small watershed projects are located.

The Secretary may provide up to 65 percent of the total costs of the rehabilitation project but may not provide more than 100 percent of the actual construction costs. A local organization seeking financial assistance must assume all costs of water, mineral and other resource rights and all permits involved in the rehabilitation work.

The Secretary may require zoning or development regulations to be put in place prior to entering into an agreement with a local organization so that the rehabilitation work will not become inadequate by subsequent development in the project area. The Secretary, acting through NRCS, may provide all required technical

assistance for planning, designing and implementing the rehabilitation project, but the assistance may not be used for operation and maintenance activities.

The local organization may apply for this assistance if an application has also been made to the state agency having jurisdiction over the project or the Governor of the State. The Secretary shall request that the state dam safety officer or equivalent state official will be involved in the application process if state permits or other approval are required.

The Secretary shall establish an approval process that provides for a proper administration of funds, recognizing that applications will be made throughout a fiscal year and approvals may be limited by funds availability. That process will be in writing and made known to local organizations and state.

Although the Secretary is not required to conduct a benefit-cost analysis, the Secretary will maintain a database to track the benefits of the rehabilitation projects. Local organizations must report to the Secretary within 90 days of receiving assistance, providing a status report of the rehabilitation effort.

PURPOSE AND NEED

Beginning in 1948, the U.S. Department of Agriculture began the construction of floodwater retention and diversion dams and stream channelizations in upland areas of small watersheds throughout the midsection of the country. Eleven larger pilot projects were built in as many states under authority of the Flood Control Act of 1944. PL-566 small watershed projects now account for a majority of the approximately 10,500 dams that were constructed from 1948 onward.

Generally, these structures, mostly earthen dams, were engineered for a useful lifespan of 50 years. Several hundred of these dams have now been in place for more than 45 years, and additional thousands are older than 30 years. Thus, spillways, slide gates and stems have deteriorated; though properly designed and maintained, sediment basins in many of the impoundments have filled in, providing less water storage, especially during storm events.

The small watershed program still yields annual benefits of \$800 million on an investment so far of about \$8.5 billion. There is currently a \$1.5 billion backlog of applications for new technical and financial assistance, and NRCS estimates about 2,000 dams need rehabilitation work soon totaling more than \$500 million.

Local sponsors are critical to the successful operation of the small watershed program. They secure land rights and easements for the project area. NRCS provides the technical and financial assistance for the actual construction. Once completed, the local sponsors assume full responsibility for maintenance and operation of the structures.

Some dams do not meet current state dam safety regulations even though maintenance has met all operational requirements. NRCS does not have authority to rehabilitate these structures, and sponsoring organizations do not have the funds for the necessary renovation work.

SECTION-BY-SECTION

Section 1.—Short title

Section 1 of the bill provides that the legislation may be cited as “The Small Watershed Rehabilitation Amendments of 1999”.

Section 2.—Rehabilitation of water resource structural measures

This section adds a new section 14 to the Watershed Protection and Flood Prevention Act (16 U.S.C. 1001 et seq.), commonly called the PL-566 program.

Subsection (a)(1) of new Section 14 defines “rehabilitation” to mean all work necessary to extend the service life of the structural measure and meet applicable safety and performance standards. This may include prolonging the useful life of the structure beyond its original life expectancy, correcting damage or deterioration of the structure, or upgrading the structural measure to meet changed last use conditions or safety needs within the watershed.

Subsection (a)(2) defines “covered water resource project” to mean works of improvement under PL-566, PL78-534 projects, pilot watershed projects under the Department of Agriculture Appropriations Act of 1954; and resource conservation and development program projects.

Subsection (a)(3) defines “structural measure” to mean a dam that impounds water and was constructed as part of a small watershed project, and includes the resulting impoundment area and flood pool of the physical structure. The impoundment area and flood pool are considered a part of the physical structure of the dam because rehabilitation work may need to be done both above and below the dam. For example, as a result of normal and expected flow of sediment into the impoundment behind the dam, some of these water bodies have been filled in to an extent they no longer act as flood retarding structures. Thus, rehabilitation work may need to be done in the impoundment area.

Likewise, severe erosion or deterioration of the physical landscape immediately below the dam caused by catastrophic weather events may require rehabilitation work to be done there, as well. It is necessary to include impoundment area and flood pool within the meaning of a structural measure covered under the bill.

Subsection (b)(1) authorizes the Secretary of Agriculture to provide assistance to cover part of the total costs of rehabilitating structural measures. These costs may include land acquisition, easements, and rights-of-way; rehabilitation administration, technical assistance, and contracting and construction costs. The local organization is responsible for securing all land rights necessary for the project.

Subsection (b)(2) requires federal funds to equal 65 percent of the total rehabilitation costs but not to exceed 100 percent of the actual construction costs. The local organization is responsible for the costs of water, mineral and other resource rights and all required permits.

Subsection (b)(3) authorizes the Secretary, working with the local organization, to ensure proper zoning and other development regulations are secured before entering into a rehabilitation agreement with the sponsoring organization.

Subsection (b)(4) makes projects and local organizations ineligible for assistance if the rehabilitation needs were caused by a lack of inadequate maintenance by the responsible party.

Subsection (c) authorizes the Natural Resources Conservation Service to provide technical assistance in all phases of the rehabilitation project if the assistance is requested by the local organization.

Subsection (d)(1) prohibits assistance under new Section 14 to be used for operational or maintenance activities, and these normal operating and maintenance activities will remain the responsibility of the local organization.

Subsection (d)(2) authorizes the Secretary to renegotiate with the local organization the original agreement for the project regarding responsibility for operation and maintenance when the rehabilitation is completed. The Committee intends that any renegotiation the Secretary may enter with a local organization must consider the private property rights of all landowners, whose property may be affected by the terms of a rehabilitation.

Subsection (e) requires an appropriate state agency or the Governor of the state to approve the local organization's application for assistance for technical and financial assistance under new Section 14. The Secretary also is required to get assistance from the state dam safety officer or equivalent state official to be involved in the application process if state permits are required for the rehabilitation project. The rehabilitation project must meet standards established by the Secretary, and the NRCS may assist in preparing applications if the local organization requests. The Committee intends that when the Secretary establishes standards for the rehabilitation project these standards should to the extent practicable accord with existing state standards. The Committee believes the Secretary to the maximum extent possible should seek the concurrence of the state dam official or that official's equivalent agency head in setting the standards for the application process.

Subsection (f) requires the Secretary to ensure the rehabilitation project is performed in the most cost effective manner that accomplishes the objective in order to qualify for assistance. Since the projects are generally required for public health or safety concerns, no benefit-cost analysis will be conducted and no benefit-cost analysis greater than one will be required. Appropriate documentation is required to ensure the wise use of funds. The Committee intends that the local organization, working with the Natural Resources Conservation Service, will provide that documentation to the Secretary in a timely manner.

Subsection (g) requires the Secretary to establish a system for approving rehabilitation requests that are equitable for all local organizations considering that requests will be received throughout a fiscal year and will be approved on the availability of funds. The approval process must be in writing and made known to all applicants. The Committee also notes that the approval process should be limited so that all applications are processed in a timely manner. All local organizations applying for assistance should know that their applications will be processed efficiently so that funding responsibilities of the local organization may be concluded with a minimum of cost to the local organization.

Subsection (h) authorizes appropriations of \$60 million in each of the fiscal years 2000 through 2009 for technical and financial assistance.

Subsection (i) requires the use of \$5 million in fiscal years 2000 and 2001 of any funds appropriated for the Secretary to assess the rehabilitation needs in all states where such small watershed projects are located.

Subsection (j) requires the Secretary to track the benefits of the rehabilitation projects under new Section 14 and to report annually to Congress. Local organization are required to report to the Secretary on the status of the rehabilitation project within 90 days after completion of the project.

Section 3.—Noninterference with State and local flood debris removal efforts

This section adds a new Section 15 to the Watershed Protection and Flood Prevention Act that forbids the Secretary of Agriculture and other executive branch officials from prohibiting or conditioning the ability of a state or local government to remove from land or waters any debris that may have been deposited by flood waters when the primary purpose of such operation is to reduce the risk and severity of subsequent flooding.

Section 4.—Privacy of personal data received by Department of Agriculture and data gathering locations

This section of the bill adds a new section to the Food Security Act of 1985. This new section prohibits the release or disclosure of information and data provided to, or developed by, the Secretary of Agriculture for the provision of technical or financial assistance to a landowner or farm or ranch operator under conservation programs administered by the Natural Resources Conservation Service or the Farm Service Agency. This prohibition extends to any person the Secretary may contract to provide these kinds of services. This information and data also may not be released under the terms of the Freedom of Information Act.

The Secretary may disclose information and data to a person or a government agency working in cooperation with the Secretary to provide technical and financial assistance. Persons or agencies that receive the information or data may release such information only to the extent it is used in conjunction with assisting the Secretary in providing such assistance.

Specific geographic locations of the Natural Resources Inventory of the Department of Agriculture's data gathering sites and the information and data collected are not public information and not subject to the Freedom of Information Act. The information and data and the gathering locations also may not be released to any governmental agency outside of the Department of Agriculture. The Secretary may release information and data from the Natural Resources Inventory so long as it is in a statistical or aggregated form that does not allow for identification of individual landowners, farm or ranch operators or individual information gathering sites.

Finally, this new section provides that violators may be fined not more than \$10,000 or imprisoned for not more than one year, or

both, for releasing or causing the release of information or data subject to this section.

COMMITTEE CONSIDERATION

I—HEARINGS

On April 15, 1999, the Subcommittee on General Farm Commodities, Resource Conservation and Credit held a public hearing in Washington, D.C., on H.R. 728, the Small Watershed Rehabilitation Amendments of 1999. Testimony was heard from Mr. Danny D. Sells, Associate Chief, Natural Resources Conservation Service, U.S. Department of Agriculture; Mr. Bill R. Wilson, past president of the Oklahoma Association of Conservation Districts, Kinta, Oklahoma; and the Honorable Frank D. Lucas, a Representative in Congress from the State of Oklahoma.

The witnesses supported adoption of the bill and pointed out the problems arising from deteriorating small watershed dams and impoundment areas.

II—SUBCOMMITTEE

The Subcommittee on General Farm Commodities, Resource Conservation, and Credit met on July 20, 1999 to consider H.R. 728, the Small Watershed Rehabilitation Amendments of 1999, and other pending business.

Chairman Barrett called the meeting to order and made opening comments and indicated that a large number of small flood prevention dams, originally funded by the Federal government, played a vital role in the economies of rural areas and are currently in desperate need of repair. Chairman Barrett further noted the lack of available resources needed for rehabilitation at this time.

Mr. Minge was also recognized for a opening statement and expressed that he wanted to include Works Progress Administration structures in the legislation.

Mr. Smith was recognized and he questioned the necessity of the legislation. Discussion occurred between the sponsor of the bill, Mr. Lucas and Mr. Smith. Mr. Lucas noted that under this legislation, the Federal government would provide financial assistance for at least sixty-five percent of the total cost to local communities for making project improvements. He also indicated that if action to rehabilitate were not taken, the government would be left with the cost of removing the aging structures.

Mr. Minge was then recognized to offer and explain an amendment to add the Works Progress Administration to the list of eligible structures. Discussion occurred and Mr. Lucas expressed his opposition to the amendment. Mr. Thune associated himself with Mr. Minge in support of the amendment. By a voice vote the amendment failed.

Mr. Lucas was then recognized and he pledged to work with Mr. Minge prior to the bill's consideration before the Full Committee.

Mr. Minge then moved that H.R. 728, be reported to the Full Committee with the recommendation that it pass. By a voice vote, the motion was approved in the presence of a quorum.

III—FULL COMMITTEE

The Committee on Agriculture met, pursuant to notice, with a quorum present, on October 27, 1999, to consider H.R. 728, as approved by the Subcommittee on General Farm Commodities, Resource Conservation, and Credit.

After brief opening remarks, the Chairman offered an Amendment in the Nature of a Substitute. Without objection, the Amendment in the Nature of a Substitute was placed before the Committee and considered as original text for purposes of amendment.

Discussion occurred, and Mrs. Chenoweth-Hage was recognized and expressed her concern over the lack of clear definitions of certain terms in the bill and renegotiations of contracts. Mrs. Chenoweth-Hage also expressed her concern that the Federal government would not overwhelm the responsibilities of the State flood control offices in each State.

Mr. Goodlatte was recognized to offer and explain an amendment that would mandate noninterference with State and local flood debris removal efforts by the Secretary of Agriculture and other Federal agencies.

Mrs. Clayton and Mr. Etheridge asked Mr. Goodlatte if his amendment would prohibit an individual from accepting help from the Federal government. Mr. Goodlatte responded that his amendment would not preclude this help at all, but it would allow those individuals who wanted to do some of the work themselves not be delayed by the Federal government to begin work. Mr. Goode expressed his support for the amendment and by a voice vote, the Goodlatte amendment was adopted.

Mr. Stenholm was then recognized to offer and explain an amendment that would amend the Food Security Act of 1985 to ensure privacy regarding information producers and land owners supply to the Natural Resources Conservation Service and the Farm Service Agency. Mr. Stenholm further noted that the National Association of State Departments of Agriculture, the American Farm Bureau Federation, and the National Association of Conservation Districts supported the amendment.

Mrs. Chenoweth-Hage was recognized and she expressed her concern about the amendment and the authority given to the Secretary of Agriculture to release certain materials to other agencies to enforce national resources conservation programs.

Discussion occurred, and Mr. Boehner expressed his support for the Stenholm privacy protection amendment. Mr. Pombo asked if the Stenholm amendment would prohibit producers' information from being released by other agencies? Mr. Stenholm replied that it was the intent of his amendment to clarify that other agencies were to have the same restrictions as the U.S. Department of Agriculture as to the release of information. Mr. Stenholm indicated that his amendment could be under the jurisdiction of other committees, but that if his amendment were to cause a problem that he would withdraw it.

Counsel explained that the Stenholm amendment would restrict and tighten the authority of the Secretary of Agriculture and other agencies to release information.

Mrs. Chenoweth-Hage questioned the germaneness of the Stenholm amendment because it amended the Food Security Act rather than the Watershed Protection Flood Prevention Act.

Chairman Combest ruled that the Stenholm Amendment was germane in that it related to the same subject matter of H.R. 728. The Chairman noted however, that the Stenholm Amendment could trigger the referral to other committees of jurisdiction.

Mr. Lucas announced his support for the Stenholm amendment and expressed his appreciation to Mr. Stenholm for his willingness to work to move the bill forward. By a voice vote, the Stenholm amendment was adopted. Mrs. Chenoweth-Hage requested a recorded vote and by a vote of 37 yeas, 1 nay and 12 not voting, the amendment was adopted. See Rollcall No. 1.

Messrs. Fletcher, Pomeroy, and Holden asked that the record note that had they been present when the recorded vote was taken on the Stenholm amendment that they would have voted in the affirmative.

Discussion occurred, and by a voice vote, the Combest Amendment in the Nature of a Substitute, as amended, was adopted.

Mr. Stenholm stated that there was a proposal in another committee to ensure that H.R. 728 includes the option of decommissioning a watershed structure as a choice for rehabilitation. Mr. Stenholm indicated his hope that the Committee would work with other committees of jurisdiction on this issue.

By voice vote and in the presence of a quorum, H.R. 728, as amended, was ordered favorably reported.

Mr. Stenholm moved that pursuant to clause 1 of rule XX that the Committee authorize the Chairman to offer such motions as may be necessary in the House to go to conference with the Senate on the bill H.R. 728, or any similar Senate bill. By voice vote, the Stenholm motion was adopted.

Without objection, the usual instructions were given to staff to make any technical, clarifying, or conforming changes as were appropriate without changing the substance of the legislation and the meeting was adjourned.

REPORTING THE BILL—ROLLCALL VOTES

In compliance with clause 3(b) of rule XIII of the House of Representatives, the Committee sets forth the record of the following rollcall votes taken with respect to H.R. 728.

Rollcall No. 1

Summary: To amend the Food Security Act of 1985 to ensure privacy regarding information producers supply to the Natural Resources Conservation Service and the Farm Service Agency.

Offered by: Mr. Stenholm.

Results: Adopted by a vote of 37 yeas/1 nay/12 not voting.

Yeas: Mr. Combest, Mr. Barrett, Mr. Boehner, Mr. Goodlatte, Mr. Pombo, Mr. Everett, Mr. Lucas, OK, Mr. Hostettler, Mr. Chambliss, Mr. Moran, Mr. Schaffer, Mr. Thune, Mr. Jenkins, Mr. Calvert, Mr. Gutknecht, Mr. Riley, Mr. Walden, Mr. Simpson, Mr. Ose, Mr. Hayes, Mr. Stenholm, Mr. Condit, Mr. Peterson, Mr. Dooley, Mrs. Clayton, Mr. Minge, Mr. Hilliard, Mr. Berry, Mr.

Goode, Mr. McIntyre, Ms. Stabenow, Mr. Etheridge, Mr. Boswell, Mr. Phelps, Mr. Lucas, KY, Mr. Thompson, CA, and Mr. Hill.

Nays: Mrs. Chenoweth-Hage.

Not Voting: Mr. Ewing, Mr. Canady, Mr. Smith, Mr. LaHood, Mr. Cooksey, Mr. Fletcher, Mr. Pomeroy, Mr. Holden, Mr. Bishop, Mr. Thompson, MS, Mr. Baldacci, and Mr. John.

BUDGET ACT COMPLIANCE (SECTIONS 308, 402, AND 423)

The provisions of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and sections 402 and 423 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 3, 1999.

Hon. LARRY COMBEST,
*Chairman, Committee on Agriculture,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional, Budget Office has prepared the enclosed cost estimate for H.R. 728, the Small Watershed Rehabilitation Amendments of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Megan Carroll (for federal costs), and Marjorie Miller (for the impact on state, local, and tribal governments).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 728—Small Watershed Rehabilitation Amendments of 1999

Summary: Based on information from the Natural Resources Conservation Service (NRCS), CBO estimates that implementing H.R. 728 would cost \$270 million over the 2000–2004 period, assuming appropriation of the amounts specified in the bill. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 728 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). State and local governments would probably incur some costs to match the grants authorized by this bill, but these costs would be voluntary.

Local watershed project sponsors, assisted by the NRCS, have constructed over 10,000 watershed projects under the Small Watershed Program. H.R. 728 would authorize the Secretary of Agriculture, acting through the NRCS, to assist local project sponsors

in rehabilitating those projects. The bill would authorize the appropriation of \$60 million a year over the 2000–2009 period for the Secretary to provide financial and technical assistance to eligible local organizations for planning, designing, and implementing watershed rehabilitation projects. H.R. 728 would require the Secretary to assess the need for watershed rehabilitation in all states in which eligible water projects exist, establish a process for approving requests for assistance, monitor the benefits of rehabilitation efforts, and submit an annual report to the Congress on the status of rehabilitation projects.

Estimated cost to the Federal Government: For purposes of this estimate, CBO assumes that H.R. 728 will be enacted early in fiscal year 2000 and that funding will be provided as authorized by the bill. Estimates of outlays are based on historical spending patterns for similar programs. In 2000, no funds have been appropriated to NRCS to provide technical assistance for the rehabilitation of small watershed projects. The estimated budgetary impact of H.R. 728 is shown in the following table. The cost of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—				
	2000	2001	2002	2003	2004
SPENDING SUBJECT TO APPROPRIATION					
Authorization Level	60	60	60	60	60
Estimated Outlays	42	51	57	60	60

Pay-as-you-go considerations: None.

Estimated impact on State, local, and tribal governments: H.R. 728 contains no governmental mandates as defined in UMRA. State and local governments would probably incur some costs to match the grants authorized by this bill, but these costs would be voluntary. The bill would require recipients to fund at least 35 percent of the total costs of assisted projects.

Estimated impact on the private sector: This bill contains no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Megan Carroll. Impact on State, local, and tribal governments: Marjorie Miller.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee report incorporates the cost estimate prepared by the Director of the Congressional Budget Office pursuant to sections 402 and 423 of the Congressional Budget Act of 1974.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the Constitutional authority for this legislation in Article I, clause 8, section 18, that grants Congress the power to make all laws necessary and proper for car-

rying out the powers vested by Congress in the Constitution of the United States or in any department or officer thereof.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Reform, as provided for in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, was available to the Committee with reference to the subject matter specifically addressed by H.R. 728.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Agriculture's oversight findings and recommendations are reflected in the body of this report.

ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104-1).

FEDERAL MANDATES STATEMENT

The Committee adopted as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104-4).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

WATERSHED PROTECTION AND FLOOD PREVENTION ACT

AN ACT To authorize the Secretary of Agriculture to cooperate with States and local agencies in the planning and carrying out of works of improvement for soil conservation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That erosion, floodwater, and sediment damages in the watersheds of the rivers and streams of the United States, causing loss of life and damage to property, constitute a menace to the national welfare; and that it is the sense of Congress that the Federal Government should cooperate with States and their political subdivisions, soil or water conservation districts, flood prevention or control districts, and

other local public agencies for the purpose of preventing such damages, of furthering the conservation, development, utilization, and disposal of water, and the conservation and utilization of land and thereby of preserving, protecting, and improving the Nation's land and water resources and the quality of the environment.

* * * * *

SEC. 14. REHABILITATION OF STRUCTURAL MEASURES NEAR, AT, OR PAST THEIR EVALUATED LIFE EXPECTANCY.

(a) **DEFINITIONS.**—For purposes of this section:

(1) **REHABILITATION.**—The term “rehabilitation”, with respect to a structural measure constructed as part of a covered water resource project, means the completion of all work necessary to extend the service life of the structural measure and meet applicable safety and performance standards. This may include (A) protecting the integrity of the structural measure or prolonging the useful life of the structural measure beyond the original evaluated life expectancy, (B) correcting damage to the structural measure from a catastrophic event, (C) correcting the deterioration of structural components that are deteriorating at an abnormal rate, or (D) upgrading the structural measure to meet changed land use conditions in the watershed served by the structural measure or changed safety criteria applicable to the structural measure.

(2) **COVERED WATER RESOURCE PROJECT.**—The term “covered water resource project” means a work of improvement carried out under any of the following:

(A) This Act.

(B) Section 13 of the Act of December 22, 1944 (Public Law 78–534; 58 Stat. 905).

(C) The pilot watershed program authorized under the heading “FLOOD PREVENTION” of the Department of Agriculture Appropriation Act, 1954 (Public Law 156; 67 Stat. 214).

(D) Subtitle H of title XV of the Agriculture and Food Act of 1981 (16 U.S.C. 3451 et seq.; commonly known as the Resource Conservation and Development Program).

(3) **STRUCTURAL MEASURE.**—The term “structural measure” means a physical improvement that impounds water, commonly known as a dam, which was constructed as part of a covered water resource project. The term includes the resulting immediate impoundment area and the immediate flood pool of the physical improvement.

(b) **COST SHARE ASSISTANCE FOR REHABILITATION.**—

(1) **ASSISTANCE AUTHORIZED.**—The Secretary may provide financial assistance to a local organization to cover a portion of the total costs incurred for the rehabilitation of structural measures originally constructed as part of a covered water resource project. The total costs of rehabilitation include the costs associated with all components of the rehabilitation project, including acquisition of land, easements, and rights-of-ways, rehabilitation project administration, the provision of technical assistance, contracting, and construction costs, except that the local

organization shall be responsible for securing all land, easements, or rights-of-ways necessary for the project.

(2) *AMOUNT OF ASSISTANCE; LIMITATIONS.*—The amount of Federal funds that may be made available under this subsection to a local organization for construction of a particular rehabilitation project shall be equal to 65 percent of the total rehabilitation costs, but not to exceed 100 percent of actual construction costs incurred in the rehabilitation. However, the local organization shall be responsible for the costs of water, mineral, and other resource rights and all Federal, State, and local permits.

(3) *RELATION TO LAND USE AND DEVELOPMENT REGULATIONS.*—As a condition on entering into an agreement to provide financial assistance under this subsection, the Secretary, working in concert with the affected unit or units of general purpose local government, may require that proper zoning or other developmental regulations are in place in the watershed in which the structural measures to be rehabilitated under the agreement are located so that—

(A) the completed rehabilitation project is not quickly rendered inadequate by additional development; and

(B) society can realize the full benefits of the rehabilitation investment.

(4) *PROHIBITION ON CERTAIN REHABILITATION ASSISTANCE.*—The Secretary shall not approve a rehabilitation request if the Secretary determines that the need for rehabilitation of the structure is the result of a lack of adequate maintenance by the party responsible for the maintenance.

(c) *TECHNICAL ASSISTANCE FOR WATERSHED PROJECT REHABILITATION.*—The Secretary, acting through the Natural Resources Conservation Service, may provide technical assistance in planning, designing, and implementing rehabilitation projects should a local organization request such assistance. Such assistance may consist of specialists in such fields as engineering, geology, soils, agronomy, biology, hydraulics, hydrology, economics, water quality, and contract administration.

(d) *PROHIBITED USE.*—

(1) *PERFORMANCE OF OPERATION AND MAINTENANCE.*—Rehabilitation assistance provided under this section may not be used to perform operation and maintenance activities specified in the agreement for the covered water resource project entered into between the Secretary and the local organization responsible for the works of improvement. Such operation and maintenance activities shall remain the responsibility of the local organization, as provided in the project work plan.

(2) *RENEGOTIATION.*—Notwithstanding paragraph (1), as part of the provision of financial assistance under subsection (b), the Secretary may renegotiate the original agreement for the covered water resource project entered into between the Secretary and the local organization regarding responsibility for the operation and maintenance of the project when the rehabilitation is finished.

(e) *APPLICATION FOR REHABILITATION ASSISTANCE.*—A local organization may apply to the Secretary for technical and financial as-

assistance under this section if the application has also been submitted to and approved by the State agency having supervisory responsibility over the covered water resource project at issue or, if there is no State agency having such responsibility, by the Governor of the State. The Secretary shall request the State dam safety officer (or equivalent State official) to be involved in the application process if State permits or approvals are required. The rehabilitation of structural measures shall meet standards established by the Secretary and address other dam safety issues. At the request of the local organization, personnel of the Natural Resources Conservation Service of the Department of Agriculture may assist in preparing applications for assistance.

(f) *JUSTIFICATION FOR REHABILITATION ASSISTANCE.*—In order to qualify for technical or financial assistance under this authority, the Secretary shall require the rehabilitation project to be performed in the most cost-effective manner that accomplishes the rehabilitation objective, however, the Secretary is not required to develop a cost-benefit ratio analysis or a cost-benefit ratio. The benefits of, and the requirements for, the rehabilitation project shall be documented to ensure the wise and responsible use of Federal funds.

(g) *RANKING OF REQUESTS FOR REHABILITATION ASSISTANCE.*—The Secretary shall establish a system for the timely consideration and approval of rehabilitation requests, recognizing that such requests will be received throughout the fiscal year and subject to the availability of funds to carry out this section. The Secretary shall ensure that the system provides for proper administration by the Department of Agriculture and is equitable for all local organizations. The approval process shall be in writing and shall be made known to all local organizations and appropriate State agencies.

(h) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to the Secretary \$60,000,000 for each of the fiscal years 2000 through 2009 to provide financial and technical assistance under this section.

(i) *ASSESSMENT OF REHABILITATION NEEDS.*—Of the amount appropriated pursuant to subsection (h) for fiscal years 2000 and 2001, \$5,000,000 shall be used by the Secretary, in concert with the responsible State agencies, to conduct an assessment of the rehabilitation needs of covered water resource projects in all States in which such projects are located.

(j) *RECORDKEEPING AND REPORTS.*—

(1) *SECRETARY.*—The Secretary shall maintain a data base to track the benefits derived from rehabilitation projects supported under this section and the expenditures made under this section. On the basis of such data and the reports submitted under paragraph (2), the Secretary shall prepare and submit to Congress an annual report providing the status of activities conducted under this section.

(2) *GRANT RECIPIENTS.*—Not later than 90 days after the completion of a specific rehabilitation project for which assistance is provided under this section, the local organization that received the assistance shall make a report to the Secretary giving the status of any rehabilitation effort undertaken using financial assistance provided under this section.

SEC. 15. NONINTERFERENCE WITH STATE AND LOCAL FLOOD DEBRIS REMOVAL EFFORTS.

The Secretary of Agriculture and other executive branch officials and employees may not prohibit or condition the ability of a State or local government to remove from land or waters any rocks, vegetation, soil, or other debris deposited by flood waters when the primary purpose of the removal operation is to reduce the risk and severity of subsequent flooding.

SECTION 1244 OF THE FOOD SECURITY ACT OF 1985

SEC. 1244. PRIVACY OF PERSONAL DATA RELATING TO NATURAL RESOURCES CONSERVATION PROGRAMS.

(a) **INFORMATION AND DATA RECEIVED FOR TECHNICAL AND FINANCIAL ASSISTANCE.**—*Notwithstanding any other provision of law and except as provided in paragraph (c), information and data provided to, or developed by, the Secretary of Agriculture (including a contractor of the Secretary) for the purpose of providing technical or financial assistance to a landowner or operator with respect to any natural resources conservation program administered by the Natural Resources Conservation Service or the Farm Service Agency shall not be released or disclosed to any agency or person outside the Department of Agriculture.*

(b) **INVENTORY, MONITORING, AND SITE SPECIFIC DATA.**—*Notwithstanding any other provision of law and except as provided in paragraph (c), in order to maintain the personal privacy, confidentiality, and cooperation of landowners and operators, and to maintain the integrity of sample sites, the specific geographic locations of the National Resources Inventory of the Department of Agriculture data gathering sites and the information and data generated by such sites are not public information and shall not be subject to mandatory disclosure or released to any local, tribal, State, or Federal agency outside the Department of Agriculture.*

(c) **EXCEPTIONS.**—

(1) **RELEASE AND DISCLOSURE FOR ENFORCEMENT.**—*The Secretary of Agriculture may release or disclose information or data covered by subsection (a) or (b) to the extent necessary to enforce the natural resources conservation programs referred to in subsection (a).*

(2) **LIMITED DISCLOSURE TO COOPERATING PERSONS AND AGENCIES.**—*The Secretary may release or disclose information or data covered by subsection (a) or (b) to a person or a local, tribal, State, or Federal agency working in cooperation with the Secretary of Agriculture in providing technical and financial assistance described in subsection (a) or collecting information and data from National Resources Inventory data gathering sites. However, the person or local, tribal, State, or Federal agency that receives the information or data may release the information or data only for the purpose of assisting the Secretary in providing the requested technical or financial assistance or in collecting information and data from National Resources Inventory data gathering sites.*

(3) **LIMITED EXCEPTION FOR STATISTICAL AND AGGREGATE DATA.**—*The Secretary may release information or data covered*

by subsection (b), if the information or data has been transformed into a statistical or aggregate form that does not allow identification of the individual landowner, operator, or specific data gathering site.

(d) VIOLATIONS.—Section 1770(c) of the Food Security Act of 1985 (7 U.S.C. 2276) shall apply to any person who releases or causes to be released information or data in violation of this section.

COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC, March 30, 2000.

Hon. DON YOUNG,
Chairman, Committee on Resources, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I am writing with regard to H.R. 728, the "Small Watershed Rehabilitation Amendments of 1999". As you know, this bill was primarily referred to the Committee on Agriculture, and in addition to the Committees on Resources, and Transportation and Infrastructure.

On November 18, 1999, the Committee on Transportation and Infrastructure reported the bill (see House Report 106-484 pt. 1), and on November 19, 1999 the Committee on Agriculture ordered reported the bill, as amended.

Please find enclosed a copy of the report to accompany H.R. 728 that the Committee intends to file. In order to allow the timely consideration, I am requesting that you waive your Committee's referral of H.R. 728.

I understand that such an action is not intended to waive your Committee's jurisdiction over this matter or any similar matter and look forward to working with you on matters of mutual interest.

Sincerely,

LARRY COMBEST,
Chairman.

Enclosure.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Washington, DC March 31, 2000.

Hon. LARRY COMBEST,
Chairman, Committee on Agriculture, Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter regarding H.R. 728, the Small Watershed Rehabilitation Amendments of 1999. As you note, this bill was primarily referred to your Committee and additionally to the Committee on Resources (as well as the Committee on Transportation and Infrastructure).

After reviewing your report on the bill and knowing that the Transportation and Infrastructure Committee has already acted on the measure, I will agree to allow the Committee on Resources to be discharged from further consideration of H.R. 728. I do so with the understanding that this action is not intended to waive the Committee on Resources' jurisdiction over this or any similar mat-

ter, and I ask that you include a copy of this letter in your report on the bill.

Thank you for your attention to Congressman Lucas' bill.

Sincerely,

DON YOUNG,
Chairman.

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